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Supreme Court, U.S.
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No. 96-1963

In The

Supreme Court of the United States

October Term, 1996

LINDA McKENNEY, et al.,

Petitioners,

vs.

JOHN MARK WILLIAMS,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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RESPONSE TO QUESTIONS PRESENTED

1. Petitioners' characterization of the issue presented, premised upon their assertion that they "do not contest the Plaintiff's version of the facts alleging Eighth Amendment violations," is belied by the recitation of those "facts" which they do not contest in their Statement of the Case (Petition, at 3-6). The facts as characterized by the Petitioners do not represent the extensive facts presented by the Respondent and considered by the district court and the Court of Appeals in Petitioners' attempted interlocutory appeal.

2. Petitioners again interpose a false premise for the question presented, because this is hardly a case where "no evidence has been presented by Plaintiff regarding culpability" of these Petitioners (Appendix B, Petition, at 6-12).

3. Petitioners' third submission again poses a false premise to form a legal question already foreclosed by this Court's decisions and unworthy of review by writ of certiorari. Respondent has never contended that "the sole fact of the death of an inmate" establishes a culpable state of mind and, *ipso facto*, results in Eighth Amendment liability under 42 U.S.C. § 1983, and no such rule has been relied upon in any decision adverse to Petitioners in the courts below. Since this Court's decision in *Estelle v. Gamble*, 429 U.S. 97 (1976), this Court has consistently required more than mere injury – no matter how serious – to prove an actionable violation of the Eighth Amendment. *Cf. Whitley v. Albers*, 475 U.S. 312 (1986).

4. Petitioners' final question presented is bound up in their assertion that the Court of Appeals' construction of 28 U.S.C. § 1291 and *Johnson v. Jones*, 511 U.S. ___, 115 S.Ct. 2151 (1995) denied their right to an immediate interlocutory appeal of the district court's order

RESPONSE TO QUESTIONS PRESENTED – Continued

denying summary judgment on their defense of qualified immunity, and is the only question legitimately raised by the issues decided in the courts below. It will be addressed in the remaining section of the Brief.

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Phyllis Williams, the personal representative of Plaintiff/Respondent, John Mark Williams, respectfully requests that this Honorable Court deny the petition for writ of certiorari to the Court of Appeals for the Tenth Circuit sought by Petitioners McKenney, Standridge, Nelson and Miller, for the reasons stated in this Brief in Opposition.

OPINIONS BELOW

The opinions relevant to this Court's disposition of the instant petition are attached as Appendix A (Court of Appeals' opinion) and Appendix B (District Court opinion) to the Petition, and will be referenced as such in this Brief in Opposition.

STATEMENT OF JURISDICTION

Respondent agrees with Petitioners that this Court has appellate jurisdiction to entertain the instant petition by virtue of 28 U.S.C. § 1254 (1).

STATUTORY AND CONSTITUTIONAL PROVISIONS

Although Petitioners have correctly set forth 42 U.S.C. § 1983 and the Eighth Amendment to the United States Constitution as provisions of law relevant to this action, the primary issue apparently presented by the

Petitioners is the appealability of the district court's order (Appendix B, Petition) pursuant to 28 U.S.C. § 1291, which provides, in pertinent part:

> The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all **final** decisions of the district courts of the United States . . .

COUNTER-STATEMENT OF THE CASE

Petitioners' antiseptic recitation of the facts is reminiscent of their concerted attempts to minimize the severity of John Williams' condition throughout the day that he died; unable then, as he is now, to seek a remedy on his own behalf. To be sure, the facts recited in the fourteen paragraphs of the Petition are the facts as these Petitioners would like to remember them, but they are not the facts (some of which are vigorously disputed) found by the district court to warrant the denial of qualified immunity. The United States District Court for the Eastern District of Oklahoma, denying summary judgment to these Petitioners, aptly stated:

> Defendants contend that they have established the objective reasonableness of their actions and that Plaintiff has failed to come forward with specific evidence to question Defendants' motivations. The court disagrees. Viewing the evidence in the light most favorable to Plaintiff, the record establishes that beginning at approximately 3:00 a.m. on April 16, 1994, Williams exhibited acute, observable signs of

> cardiopulmonary complications. Notwithstanding these symptoms and each Defendant's knowledge of Williams' condition, as well as the existence of medical records indicating a positive cardiac history, Williams received no medical treatment while at the prison other than a limited examination by McKenney and the prescription of an ulcer-related medication. It wasn't until approximately 7:00 p.m. on April 16, 1994 – some 16 hours after Williams notified prison officials of his problem – that Williams was transported to a hospital for medical treatment. Given these facts, and the reasonable inferences that can be drawn from the record regarding the individual Defendants' motivations for their respective actions and omissions, the court can only conclude that genuine issues of material fact exist as to the characterization of Defendants' conduct for purposes of evaluating an Eighth Amendment claim under a deliberate indifference standard.
>
> (Appendix B, Petition, at 12).

The district court's reference to the "reasonable inferences that can be drawn from the record regarding the individual Defendants' motivations for their respective actions and omissions" are worthy of some examination which is entirely lacking from Petitioners' averments to this Court The record reveals evidence of willful wrongdoing in Mr. Williams' case concerning each of these Petitioners:

- Standridge admitted that Mr. Williams' initial symptoms warned him of a "possibility" that Mr. Williams' illness was heart-related, yet he ignored these symptoms. Handwritten notes and altered log entries of

correctional officer Aaron Burdex indicate that Standridge may have subsequently pressured or intimidated Burdex concerning the contents of an incident report relating to the severity of Mr. Williams' condition. (Appendix B, Petition, at 6, fn. 4).

- McKenney refused to enter Mr. Williams' unit at Mack Alford Correctional Center to treat him, despite Mr. Williams' undisputed inability to walk to the medical unit under his own power. She dismissed Burdex's request that she check Mr. Williams on the unit when she "hung the phone up in my face." She ignored the pleas of correctional officer Burdex that Mr. Williams "was showing signs of heart failure, congested heart failure" with the curt response that Mr. Williams "don't have no heart trouble."[1] She never called, consulted, or sought a qualified diagnosis of Mr. Williams from a licensed physician. (Appendix B, Petition, at 7-8).

- Despite Mr. Williams' deteriorating condition throughout that day – which blood tests later revealed to be the result of cardiac damage which increased in lethal potential with every passing hour – each successive Shift Captain, beginning with Standridge, then Miller, and finally Nelson, ignored the signs of Mr. Williams' agony and approaching death. (Appendix B, Petition, at 8-9).

- Nelson, although thoroughly briefed on Mr. Williams' condition (Mr. Williams never walked under his own power and could hardly take food or drink from the

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[1] As early as 9:30 a.m. that morning, inmates reported to Nurse McKenney that Williams was "anxious about dying in prison" and was "afraid if he went to sleep he would stop breathing." We know this because McKenney duly noted these events in her notes. She never returned to the unit to see Williams.

inmates who tried to assist him), waited until the conclusion of the evening meal before authorizing Mr. Williams' transport to nearby Atoka Memorial Hospital. Because he could not walk, Mr. Williams was taken by wheelchair to the Central Control Area. Nelson then delayed Mr. Williams' transport (in a state corrections van with no medical or emergency staff, and no oxygen tank) while he dispatched another inmate to return to the unit and retrieve blue jeans for Mr. Williams to wear. Nelson apparently felt that Mr. Williams could not be transported in the sweat pants he had worn all day as he lay dying. Nelson looked on as Mr. Williams had to be lifted from the wheelchair to remove the sweat pants and put on the blue jeans. (Appendix B, Petition, at 8-9).

- When Mr. Williams' custodians delivered him to the care of physicians at Atoka Memorial Hospital at 7:35 p.m., he was promptly diagnosed with acute myocardial infarction – a massive heart attack. Despite their belated efforts to save him, his heart stopped at 9:15 p.m. He was pronounced dead at 9:25 p.m. (Appendix B, Petition, at 9).

REASONS FOR DENYING THE PETITION

The Court of Appeals Properly Applied *Johnson v. Jones* And Dismissed Petitioners' Interlocutory Appeal

In the decision from which Petitioners now seek certiorari, the Court of Appeals correctly followed the rule set down by this Court in *Johnson v. Jones*, 511 U.S. ___, 115 S.Ct. 2151 (1995). The question of the Court of Appeals' jurisdiction to review the district court's denial of summary judgment under 28 U.S.C. § 1291 was posed by the Court of Appeals and fully briefed by the parties.

The Court of Appeals cited this Court's subsequent statement that "*Johnson* held, simply, that determinations of evidentiary sufficiency at summary judgment are not immediately appealable merely because they happen to arise in a qualified immunity case; if what is at issue in the sufficiency determination is nothing more than whether the evidence could support a finding that particular conduct occurred, the question decided is not truly 'separable' from the plaintiff's claim, and hence there is no final decision." Appendix A, Petition, at 2, *citing, Behrens v. Pelletier,* 116 S.Ct. 834, 842 (1996).

Stripped of the extravagant claim that the unpublished Court of Appeals' order here under consideration represents a "decision to eliminate the defense of qualified immunity in an action alleging cruel and unusual punishment under the Eighth Amendment," Petitioners argument here seeks to "legalize" an essentially factual question of the state actors' subjective intent; and thereby to obtain immediate review in the Court of Appeals of every district court order which refuses to swallow whole a civil rights defendant's view of which facts are relevant to a determination of liability. Even if this Court were inclined to adopt the expansive view of § 1291 urged by these Petitioners, there is no basis on the record before this Court to conclude that the outcome would have been different.

The Petitioners fundamentally disagree with the district court's refusal to accept their version of the "undisputed facts" (a version substantially identical to the sanitized fourteen paragraphs found in the Petition) and move on to a conclusion that their actions were "objectively legally reasonable." The district court considered

the evidence under the appropriate standard in the posture of a request for summary-judgment – in the light most favorable to the Plaintiff – and simply concluded:

> Given these facts, and the reasonable inferences that can be drawn from the record regarding the individual Defendants' motivations for their respective actions and omissions, the court can only conclude that *genuine issues of material fact exist* as to the characterization of Defendants' conduct *for purposes of evaluating an Eight Amendment claim under a deliberate indifference standard.*

We take this to mean a very simple thing: That the facts presented by Plaintiff/Respondent were sufficient to submit the question of Petitioners' deliberate indifference to a serious medical need to a properly instructed jury. Petitioners do not make the claim that a jury is incompetent to make this determination: They are typically the prevailing parties in such cases. Nor can they make the claim that their motion for summary judgment requires the district court to take that question from the jury in every case before a single witness is sworn, so that they might immediately appeal that determination to the nearest Court of Appeals.

To grant the relief requested by Petitioners would require the Court of Appeals to face the very problems which led this Court to its unanimous decision in *Johnson v. Jones*, 511 U.S. ___, 115 S.Ct. 2151 (1995): The inconvenience and costs of piecemeal review, the danger of denying justice by delay, the comparative expertise of trial and appellate courts, and the wise use of appellate resources counsel against it. This Court held in *Mitchell v. Forsyth*,

472 U.S. 511 (1985) that "a district court's claim of qualified immunity, to the extent that it turns on *an issue of law*, is an appealable 'final decision' within the meaning of 28 U.S.C. 1291." Id. at 526. (emphasis added). Moreover, the Court's decision in *Harlow v. Fitzgerald*, 457 U.S. 800 (1982) defined "objective legal reasonableness" as official conduct which "does not violate *clearly established* statutory or constitutional rights of which a reasonable person would have known." Id. at 818. Petitioners have never contested Respondents' claim that deliberate indifference to a serious medical need violates "clearly established" rights guaranteed by the Eighth Amendment. *Estelle v. Gamble*, 429 U.S. 97 (1976).

Petitioners cannot bring this case within the parameters of the order held immediately appealable in *Behrens v. Pelletier*, 516 U.S. ___, 116 S.Ct. 834 (1996), because the district court's order did not "necessarily" determine that certain conduct attributed to Petitioners constituted a violation of clearly established law. The district court's order simply identified, quite clearly, those genuine disputes of material fact which might permit a properly instructed jury to find that Petitioners acted with deliberate indifference to Respondents' serious medical need. This was the extent of the court's duty under the Petitioners' motion for summary judgment. Nor was this a case, such as that anticipated in *Johnson v. Jones*, where "a court of appeals may have to undertake a cumbersome review of the record to determine what facts the district court, in the light most favorable to the nonmoving party, likely assumed." 115 S.Ct. at 2159.

The Court of Appeals correctly perceived the Petitioners' invocation of "objective legal reasonableness" as

"merely an attempt to recast what is essentially a factual question as a legal one to avoid the consequences of *Johnson v. Jones*. Appendix A, Petition, at 3. This Court should reject Petitioners' further efforts to convert the shield of qualified immunity into the sword of expense and delay.

CONCLUSION

This Court should deny the writ of certiorari, and the petition therefore should be dismissed.

Respectfully submitted,

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